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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW CHRISTOPHER JACKSON,

Defendant and Appellant.

G051832

(Super. Ct. No. 13CF3485)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Thomas A. Glazier, Judge. Reversed and remanded with directions.

Sylvia W. Beckham, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant  
Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and  
Alastair J. Agcaoili, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Matthew Christopher Jackson appeals from an order denying his petition to have his felony grand theft of a firearm conviction redesignated as a misdemeanor under the “Safe Neighborhoods and Schools Act” (Proposition 47). Defendant contends, the Attorney General concedes, and we agree, the trial court erred in denying defendant’s petition based solely on the nature of the property stolen.

In 2014 defendant pleaded guilty to first degree residential burglary and grand theft of a firearm (Pen. Code, §§ 459, 460, subd. (a), 487, subd. (d)(2); all further statutory references are to this code) and the court sentenced him to two years in prison. A month later defendant petitioned to recall his sentence on the grand theft under section 1170.18, enacted as part of Proposition 47. The district attorney opposed on the grounds defendant was statutorily ineligible for relief. At a hearing on the petition, the court agreed with the district attorney and denied the petition “based on . . . the nature of the property[,] a . . . firearm.”

Defendant’s primary complaint on appeal is the court erroneously concluded he was statutorily ineligible for resentencing because the property he took was a firearm. The Attorney General rightly concedes the error.

Section 1170.18, subdivision (a) provides: “A person currently serving a sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor . . . had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with . . . Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.” Further, section 490.2 subdivision (a) states: “*Notwithstanding Section 487 or any other provision of law defining grand theft*, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor.” (Italics added.)

Thus, the plain language of sections 1170.18, subdivision (a) and 490.2, subdivision (a) dictates a conviction for grand theft of a firearm in violation of section 487, subdivision (d)(2) is eligible for resentencing, so long as he can show the value of the firearm taken was \$950 or less. (*People v. Perkins* (2016) 244 Cal.App.4th 129, 141.)

After defendant filed his reply brief, we granted his request to file a supplemental brief in which he (1) acknowledged he bears the initial burden of proving his eligibility for resentencing, including the burden of showing the value of the firearm taken was \$950 or less, and (2) withdrew his earlier argument that the value of the firearm must be determined based only on the information in the record of conviction. We have no quarrel with either point. (See generally *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 448-450; *People v. Sherow* (2015) 239 Cal.App.4th 875, 880.)

Therefore, as requested by both parties, the challenged order is reversed and the matter is remanded for a further hearing on the petition. The court shall determine whether the value of the firearm taken was \$950 or less, and if defendant is still serving his sentence in this case, whether resentencing him on the grand theft charge “would pose an unreasonable risk of danger to public safety.” (§ 1170.18, subd. (b).)

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.